



**Presentation to the GSA Multiple Award Schedule Advisory Panel**

**On Stakeholder Expectations**

**By**

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President  
Centre Consulting, Inc**

Good morning.

Thank you for allowing me to speak about two issues that directly impact both contractors and government buyers. My company, Centre Consulting, Inc., is both a GSA schedule holder and a training company. Our wholly-owned *Federal Contracting Institute* trains both government and industry personnel on a wide range of federal procurement topics, including a specialized Centre/NCMA GSA Certificate studies program. So, as you can see, we are very active in the GSA training arena.

The two important issues I would like to address are time-and-materials (T&M) contracting and performance-based contracting. GSA Schedules assist the government in its stated goal of buying more goods and services in a commercial manner consistent with FAR Part 12. As we all know, contractor services on GSA Schedules are negotiated at hourly rates consistent with commercial practices.

While I am mindful of past abuses in the area of T&M contracting, it is my opinion that we have now over-legislated and over-regulated the government's ability to use T&M contracts. We are now at the point where DoD cannot buy commercial

services unless they meet the following very narrow exceptions: services procured in support of a commercial item; emergency repair services; or service acquisitions where an agency head approves the contracting officer's determination that the services are commonly offered and sold competitively in substantial quantities in the commercial marketplace through the use of T&M or labor-hour contracts. These limitations may negatively impact some of the most innocuous purchases (e.g., staff augmentation). It is no secret that many agencies are relying on contractor staff to supplement and even support key positions. The person sitting at the reception desk answering the phones in a Pentagon office is probably a contractor employee. Should DoD procurement professionals have such stringent limitations placed on their ability to purchase this type of support on a time-and-material basis? And where is the contractor going to sell the receptionist with the security clearances in the commercial marketplace?

This segues to my next point on performance-based contracting. As I said in my testimony before the Section 1423 Panel—not all acquisitions are appropriate for performance-based contracts. Do we really want to monitor how fast that receptionist answers the phone? I say let's step back and look at the types of goods and services we are procuring and decide what restrictions are appropriate for those specific items. The government needs to be able to buy some services quickly and easily on a labor-hour basis and the contractor needs to be able to provide them without excessive amounts of file documentation requirements on both sides.

Thank you for your time.

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16 June 2008

## COFPAES Presentation on GSA Federal Supply Schedule/ Multiple Award Schedule *Re: Architect-Engineer Services*

Brian Pallasch, CAE  
American Society of Civil Engineers  
June 16, 2008

## Who is COFPAES ?

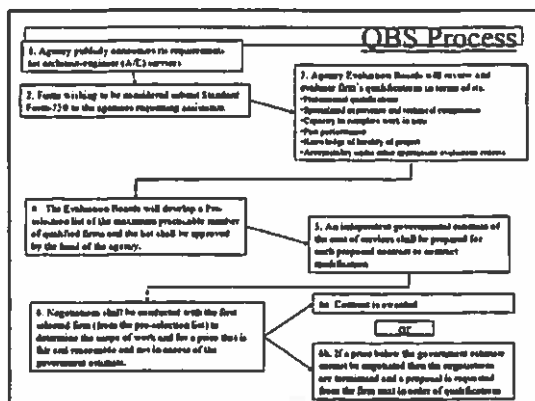
- Council on Federal Procurement of Architectural & Engineering Services
  - American Congress on Surveying and Mapping (ACSM)
  - American Institute of Architects (AIA)
  - American Society of Civil Engineers (ASCE)
  - Management Association for Private Photogrammetric Surveyors (MAPPS)
  - National Society of Professional Engineers (NSPE)

## Who is COFPAES?

- Five leading U.S. professional societies representing both public service and private sector A/E practitioners
- Governed by Board of Delegates of practitioners from each Member Organization
- Requires *unanimous* vote on policy positions
- Established in 1966
- Focus on A/E procurement issues
- Worked with Rep. Jack Brooks on enactment of "Brooks Act" and support thereafter

## A/E Definition

- COFPAES is a strong proponent of the "Brooks Act" qualifications based selection (QBS) process in 40 USC 1101 and FAR Part 36; and long endorsed in ABA Model Procurement Code



## GSA Schedule

- GSA Federal Supply Service created Multiple Award Schedules (MAS) for Professional Engineering Services, Information Technology, Environmental Services, *and others*
- All include A/E services as defined in FAR Part 36
- Schedules, with pricing, is a Brooks Act violation

### GSA Schedule

- GSA has denied COFPAES request to remove and rename these services on MAS
- Legislation enacted to assure compliance with the law SARA (PL 108-136; sec. 1427(b))
- GSA still has A/E services on its MAS!

### Removal

- The Multiple Award Schedules (MAS) must be revised to remove A/E services, including mapping, remote sensing and GIS.

### Current Law

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- The term "architectural and engineering services" means--
- (A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

### Current Law

- Brooks Act Definition (40 U.S.C. 541 (3))
- The term "architectural and engineering services" means--
- (B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

## Current Law

- Brooks Act Definition (40 U.S.C. 541 (3))
- The term "architectural and engineering services" means--
- (C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, *surveying and mapping*, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. (emphasis added)

## Current Law

- SARA (PL 108-136; sec. 1427(b))
- ARCHITECTURAL AND ENGINEERING SERVICES- Architectural and engineering services (as defined in section 1102 of title 40, United States Code) shall not be offered under multiple-award schedule contracts entered into by the Administrator of General Services or under Governmentwide task and delivery order contracts entered into under sections 2304a and 2304b of title 18, United States Code, or sections 303H and 303I of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 257b and 257i) unless such services--
- (1) are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, territory (including the Commonwealth of Puerto Rico), possession, or Federal District in which the services are to be performed; and
  - (2) are awarded in accordance with the selection procedures set forth in chapter 11 of title 40, United States Code.

## Current Regulation

- (FAR) 48 CFR 2.101 Definitions.
- "Architect-engineer services," as defined in 40 U.S.C. 1102, means--
- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
  - (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
  - (3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

## Current Regulation

- (FAR) 48 CFR 36.601-4
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- (FAR) 48 CFR 36.601-4
- Contracting officers should consider the following services to be "architect-engineer services" subject to the procedures of this subpart:
- (1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

## Current Regulation

- (FAR) 48 CFR 36.601-4
- (2) Professional services of an architectural or engineering nature associated with design or construction of real property

### Current Regulation

- (FAR) 48 CFR 36.601-4
- (3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

### Current Regulation

- (FAR) 48 CFR 36.601-4
- (1) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

### Current Regulation

- (FAR) 48 CFR 36.601-4
- (b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

### Current Regulation

- FAR parts 2, 8, 16, and 36 prohibit the use of MAS for A/E services (implementing SARA (PL 108-136; sec. 1427(b))
- <http://edocket.access.gpo.gov/2005/05-19469.htm>

### State Law

- More than 40 States have "mini-Brooks Acts" providing for QBS procurement of A/E/S/M services
- All 50 States, plus Territories, have licensing laws for architecture, engineering and surveying
  - many define mapping and GIS as the practice of surveying
  - all include definitions of the practice
  - all limit licensed professionals to practicing or offering to practice
  - also limit the use of the term "professional engineering services"

### GAO Rulings

- GAO has ruled that the Brooks Act is NOT limited to construction-related projects or services, but to A/E services generally
  - (Association of Soil and Foundation Engineers-- Reconsideration, B-199548.2, August 13, 1982)
- GAO has ruled that the Brooks Act is NOT limited to architect-engineer firms, but includes surveying and mapping firms
  - (White Shield, Inc., B-235967, October 30, 1989)

## Summary

- Law and FAR prohibit current MAS for A/E Services
- GSA is permitting firms to violate State law by offering "professional engineering services" even if not so licensed: "PES Schedule" is itself a violation of state law
- FAR unequivocally states Surveying is an A/E service, yet PES offers Surveying services
- There are no Civil Engineering services that are not subject to Brooks Act, yet PES offers Civil Engineering services
- Other schedules offer rates for architects, engineers, surveyors, mappers, GIS, in violation of the law

## Summary - 2

- While GSA has disclaimers, they still offer the services
- GSA has no method for policing and enforcing violations
- GSA has refused to remove MAS services and change titles

## Conclusion

- To assure that MAS is consistent with Federal law and regulation, as well as State law, all architecture, engineering, surveying mapping and GIS services must be removed
- If GSA wishes to offer architecture, engineering, surveying mapping and GIS services under a MAS, it must create a new one that is Brooks Act QBS compliant

Thank you !

## Questions & Discussion

Council on Federal Procurement of Architectural & Engineering Services (COFPAES)

## For Further Information:

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